

## **STATUS OF THE CLAIMS**

Claims 5, 6, 11, 12, 18, 22, 23, 28, 31-48 are pending in the Application.

Claims 33-35, 37-39 and 41-48 are allowed by the Examiner.

Claims 5, 6, 11, 12, 18, 22, 23, 28, 36 and 40 are rejected by the Examiner.

Claims 22, 36 and 40 have been amended, herein.

Claims 1-4, 7-10, 13-17, 19-21, 24-27, 29-30 and 49-97 have been cancelled, without prejudice, herein.

Reconsideration of the present Application is respectfully requested.

## **REMARKS**

### **Allowable Subject Matter**

Applicant acknowledges Examiner's belief that claims 33-35, 37-39 and 41-48 constitute allowable subject matter. Thus, Applicant believes the application is ripe for allowance.

### **Claim Rejections Based On Double Patenting**

Claims 5-6, 11-12, 18, 22-23, 28 and 31-32 have been rejected under the judicially created doctrine of double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,770,345. Applicant respectfully traverses these rejections for at least the following reasons.

Applicant respectfully submits that the Examiner has not accurately stated the elements of U.S. Patent No. 6,770,345 ("the '345 patent) in comparison to those of the present Application. In

the present Office Action, the Examiner states that the '345 patent has a tab. Claim 1 of the '345 patent, which is the single independent claim for claims 1-30, reads as follows:

1. A substantially unitary label suitable for being attached to an object having an outer circumference and including a removable cap for accessing an interior hollow of said object, said label comprising:

a first substantially planar portion suitable for being substantially permanently affixed about at least a portion of said circumference of said object;

a second substantially planar portion longitudinally positioned with respect to said first portion and operable to at least partly overlie said first label portion in a peelable and resealable fashion when said first label portion is affixed about at least a part of said circumference of said object, said first and second label portions having a combined length which is greater than said circumference of said object, and said second label portion having a width less than at least a part of said first portion; and

at least one tear strip being positioned so as to be suitable for evidencing removal of said cap when said first label portion is affixed about at least a part of said circumference of said object.

Nowhere does this claim contain a tab. Similarly, dependent claims 2-30 of the '345 patent do not add to claim 1 the element of a tab. Additionally, claim 1 includes "*at least one tear strip being positioned so as to be suitable for evidencing removal of said cap*", which is an element completely absent in the pending claims of the present Application. Thus, the present invention, as claimed, is patently distinguishable from that of the '345 patent in two ways, specifically, in that Claims 5-6, 11-12, 18, 22-23, 28 and 31-32 do not claim a "tear strip", and the '345 patent does not claim a tab.

Alternatively, Applicant respectfully elects to postpone the filing of any terminal disclaimer until either an Allowance is granted for any of the above listed claims in the present Application or in any of the named co-pending Applications, or until all other grounds of rejection have been removed.

### **Claim Rejections Pursuant to 35 U.S.C. 112, Second Paragraph**

Claims 22, 36 and 40 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

35 U.S.C. 112, second paragraph, states:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The present Office Action rejects claim 22, for improperly depending from a cancelled claim. Applicant respectfully submits that claim 22, as amended, satisfies the requirements of 35 U.S.C. § 112.

The present Office Action rejects claim 36, as vague and unclear. Applicant respectfully submits that claim 36, as amended, satisfies the requirements of 35 U.S.C. § 112.

The present Office Action rejects claim 40, as lacking antecedent basis. Applicant respectfully submits that claim 40, as amended, satisfies the requirements of 35 U.S.C. § 112.

### **CONCLUSION**

Wherefore, Applicant believes he has addressed all outstanding grounds raised by the Examiner and respectfully submits the present case is in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or outstanding

matters, the Examiner is cordially invited and requested to contact Applicant's undersigned attorney at his number listed below.

Respectfully submitted,

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